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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,243	07/23/2001	Thomas G. Mushaben	CLOP/465CP	4993
26875	7590	02/01/2006	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			LUK, EMMANUEL S	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/911,243

Applicant(s)

MUSHABEN, THOMAS G.

Examiner

Emmanuel S. Luk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Applicant's appeal of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
2. In view of the appeal brief filed on 9/1/05, PROSECUTION IS HEREBY REOPENED. A new ground of rejection set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

3. Since this office action is being sent to correct a mistake in the previous Office action, the response period should be restarted.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 17, 18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Lorenz (1667292).

Lorenz teaches the claimed apparatus having a first interdigital roller (10), and second interdigital roller (12), and a roll (20) that is a disc or controller that presses the material into the first roller, a set of interengaging spaced rollers (19). The material used is an intended use and Lorenze teaches the claimed apparatus.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 19, 20, 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenz (1667292) in view of Lorenz (1676655).

Lorenz ('292) teaches the claimed apparatus having a first interdigital roller (10), and second interdigital roller (12), and a roll that acts as a controller (20) that presses the material into the first roller, a set of interengaging spaced rollers (19). The material used is an intended use and Lorenz teaches the claimed apparatus.

Lorenz fails to teach a plurality of controllers, the controller being another corrugator, the controller being laterally adjustable.

Lorenz ('655) further teaches a roll (21), acting as the controller that will press the material to the first roller (11) that is adjustable (24, 25). It would have been obvious to one of ordinary skill in the art to modify Lorenz to have a plurality of controllers as seen by the multiple rolls (21, 22) in Lorenz.

It would have been obvious to one of ordinary skill in the art to modify Lorenz ('292) with a plurality of controllers, the controller being a corrugator, and the controller being laterally adjustable as taught by Lorenz ('655) because it allows for an adjustable control on the material to be shaped.

Response to Arguments

9. Applicant's arguments have been fully considered and are persuasive. The rejection of 6/1/04 has been withdrawn. The arguments concerning the interdigital rollers stretching along the width as been considered, however, both Lorenz references

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teaches this feature. The argument concerning the polymeric film is considered, however, the material used by the apparatus is an intended use of the structure and it is the structure itself that is considered in an apparatus claim. In considering the controller that does not stretch the material, the roll (20) in Lorenz ('292) presses the roll against the first interdigital roller, but it does not stretch the material. Concerns for the group claimed in claims 20 and 25 have been noted, however Lorenz ('655) addresses this issue.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lorenz (1686388).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel S. Luk whose telephone number is (571) 272-1134. The examiner can normally be reached on Monday-Thursday 8 to 5 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Davis can be reached on (571) 272-1129. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0987.

E.L.

DUANE SMITH
SUPERVISORY PATENT EXAMINER

DUANE SMITH
PRIMARY EXAMINER

[Signature]
1-31-06